

The most important factor in determining jurisdiction for the local Retailers' Occupation Taxes is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115. (This is a PLR).

January 15, 2002

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of December 19, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

We are hereby respectfully requesting a private letter ruling based on the following facts:

Facts

AAA is currently located at ADDRESS, IL. The facility in CITY is comprised of office, shop and storage tanks. All orders are taken from this location and all delivery vehicles load from either this location or a refinery. AAA delivers throughout the #1 County and #2 County area.

AAA is relocating its office (which performs all sales and accounting functions) to CITY2 (#2 County), IL. AAA has decided to relocate its offices in order to stay competitive. Currently, AAA is at a competitive disadvantage due to the higher #1 County sales tax rates. All orders will be taken and accepted at the CITY2 (#2 County), IL offices. The delivery trucks will load either from the storage tanks in CITY (#1 County), IL or from a refinery from there they will deliver through out the entire #1 County and #2 County area.

AAA will continue to sell some gasoline from retail pumps and refill propane tanks at the CITY (#1 County), IL location (these sales will obviously be subject to CITY, #1 County, sales tax).

Issue

What sales tax rate should be charged to the customers on orders that are taken and accepted at the CITY2 (#2 County), IL location and delivered as outlined above? Should the rate of CITY (#1 County), IL or CITY2 (#2 County), IL be charged to customers?

Support

It is our belief that the sales should be taxed at the CITY2 (#2 County), IL sales tax rate per the Illinois Department of Revenue Regulations (Title 86, Part 270, section 270.115). According to 270.115(a)(1) 'enough of the selling activity must occur within the home rule municipality to justify concluding that the seller is engaged in business within the home rule municipality with respect to the sale'. In this case 100% of the selling activity is occurring within CITY2 (#2 County), IL. In addition, per 270.115(b)(1) 'it is the Department's opinion, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling'. The seller's acceptance will occur in CITY2 (#2 County), IL. Therefore, we believe that the correct sales tax rate to charge is the rate of CITY2 (#2 County), IL.

Contrary Support

We were unable to find any legal support that opposed our previous findings.

Tax Period

The tax period being affected is all future tax periods.

To the best of our knowledge this submission of facts has not been submitted for a private letter ruling or ruled on in the past for AAA.

If you have any further questions, please contact our firm. Thank you for your time and consideration.

You have correctly identified the Department rule that is dispositive of this issue. The rate of tax is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred. Although 86 Ill. Adm. Code 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

Your letter indicates that you will be accepting purchase orders from your CITY2 location. As such, the CITY2 sale tax rate would apply.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.